

AMENDED IN SENATE MARCH 25, 2014

SENATE BILL

No. 1363

Introduced by Senator Hancock

February 21, 2014

An act to amend Section 3041 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1363, as amended, Hancock. ~~Sentencing~~—Sentencing: parole.

Existing law requires the Board of Parole Hearings to meet with each inmate during the 6th year prior to the inmate's minimum eligible parole release date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to both parole eligibility and to the granting or withholding of postconviction credit. During this consultation, the board is required to provide the inmate with information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Existing law requires the board to issue its positive and negative findings and recommendations to the inmate in writing, within 30 days following the consultation.

This bill would require the board to establish criteria for the setting of the base term of incarceration. The criteria shall include, but not be limited to, consideration of the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. The bill would require the board to establish criteria for determining whether an inmate is suitable for parole, and would require the board to establish criteria for an inmate's adjusted base term of

incarceration, as adjusted by applicable enhancements or credits. The bill would require an inmate who is found suitable for parole to be paroled regardless of whether the base term of incarceration, as adjusted, has expired, subject to certain minimum term provisions and specified review provisions.

Existing law requires that one year prior to the inmate's minimum eligible parole release date a panel of 2 or more commissioners or deputy commissioners acting for the board meet with the inmate and, subject to exception, set a parole release date per specified procedures.

The bill would require the panel meeting with the inmate to establish the inmate's base term of incarceration by applying the applicable factors set out in the board's regulations and guidelines. The bill would require the board to adopt prior determinations and findings of the sentencing court in establishing the base term of incarceration. The bill would require that the base term of incarceration be set in a manner that will, to the greatest extent possible, provide proportionate and uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, that will comply with the sentencing rules that the Judicial Council may issue, and with any sentencing information relevant to the setting of the base term of incarceration. The bill would require the board to also establish the inmate's adjusted base term of incarceration by applying any adjustments to the base term of incarceration based on the inmate's incarceration history. The bill provides that at the meeting one year prior to the inmate's minimum eligible parole release date the board will normally set a release date at the inmate's initial parole hearing, but is not required to set a parole date in every case.

Existing law requires the board to separately state reasons for its decision to grant or deny parole.

The bill would require the board's stated reasons to demonstrate, on the record, an individualized consideration of all relevant factors. The bill would require that in the case of an inmate who has served beyond his or her base term of incarceration, as adjusted, a decision by the board to deny parole be supported by substantial evidence and with respect to the entire record.

The bill would require the board to collect and maintain statistics that show, annually, the number of inmates in state prison who are serving a term in excess of their base term of incarceration, as adjusted by applicable enhancements or credits, and the percentage of all cases decided each year in which the board, in a final decision, by a panel

or the board sitting en banc, has declined to find an inmate suitable for parole, despite the fact that the inmate has served a sentence beyond the base term of incarceration, as adjusted by applicable enhancements or credits. The bill would require the board to report the data to the Legislature on or before January 1, 2016, and annually thereafter.

~~Existing law generally provides that felons are incarcerated in county jails, and are subject to county supervision upon release, excepting however, felons convicted of violent or serious felonies, or of felonies requiring registration as a sex offender, who are incarcerated in state prison and are generally subject to supervision by the Department of Corrections and Rehabilitation upon release.~~

~~This bill would express the intent of the Legislature to enact legislation relating to sentencing and parole.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041 of the Penal Code is amended to
2 read:
3 3041. (a) *The Board of Parole Hearings shall establish criteria*
4 *for the setting of the base term of incarceration. The criteria shall*
5 *include, but not be limited to, consideration of the number of*
6 *victims of the crime for which the inmate was sentenced and other*
7 *factors in mitigation or aggravation of the crime.*
8 (b) *The board shall establish criteria for determining whether*
9 *an inmate is suitable for parole. The board shall establish criteria*
10 *for an inmate's base term of incarceration, as adjusted by*
11 *applicable enhancements or credits, that shall be relevant but not*
12 *dispositive of whether an inmate is suitable for parole.*
13 (c) *The board has the discretion to determine the suitability for*
14 *parole of any inmate who is eligible for parole, giving paramount*
15 *consideration to public safety. An inmate who is found suitable*
16 *for parole shall be paroled regardless of whether the base term*
17 *of incarceration, as adjusted, has expired, subject to the minimum*
18 *term provisions in Section 3046, as applicable, and to the review*
19 *provisions in subdivision (c), and Sections 3041.1 and 3041.2, and*
20 *subdivision (b) of Section 8 of Article V of the California*
21 *Constitution. This section does not affect the Governor's*
22 *independent authority to review, under Sections 3041.1 and 3041.2*

1 *and under subdivision (b) of Section 8 of Article V of the California*
2 *Constitution, a parole decision by the board.*

3 *(d) In the case of any inmate sentenced pursuant to any law,*
4 *other than Chapter 4.5 (commencing with Section 1170) of Title*
5 *7 of Part 2, the Board of Parole Hearings shall meet with each*
6 *inmate during the sixth year prior to the inmate's minimum eligible*
7 *parole release date for the purposes of reviewing and documenting*
8 *the inmate's activities and conduct pertinent to both parole*
9 *eligibility and to the granting or withholding of postconviction*
10 *credit. During this consultation, the board shall provide the inmate*
11 *information about the parole hearing process, legal factors relevant*
12 *to his or her suitability or unsuitability for parole, and*
13 *individualized recommendations for the inmate regarding his or*
14 *her work assignments, rehabilitative programs, and institutional*
15 *behavior. Within 30 days following the consultation, the board*
16 *shall issue its positive and negative findings and recommendations*
17 *to the inmate in writing. One*

18 *(e) One year prior to the inmate's minimum eligible parole*
19 *release date a panel of two or more commissioners or deputy*
20 *commissioners shall again meet with the inmate and shall normally*
21 *set a parole release date as provided in Section 3041.5. in every*
22 *case establish the inmate's base term of incarceration by applying*
23 *the applicable factors set out in the board's regulations and*
24 *guidelines. The board shall adopt prior determinations and findings*
25 *of the sentencing court in establishing the base term of*
26 *incarceration. The base term of incarceration shall be set in a*
27 *manner that will, to the greatest extent possible, provide*
28 *proportionate and uniform terms for offenses of similar gravity*
29 *and magnitude with respect to their threat to the public, and that*
30 *will comply with the sentencing rules that the Judicial Council*
31 *may issue, and with any sentencing information relevant to the*
32 *setting of the base term of incarceration. The board shall also*
33 *establish the inmate's adjusted base term of incarceration by*
34 *applying any adjustments to the base term of incarceration based*
35 *on the inmate's incarceration history. The board shall normally*
36 *set a release date at the inmate's initial parole hearing, as provided*
37 *in Section 3014.5, but is not required to set a parole date in every*
38 *case. No*

39 *(f) No more than one member of the panel shall be a deputy*
40 *commissioner. In the event of a tie vote, the matter shall be referred*

1 for an en banc review of the record that was before the panel that
 2 rendered the tie vote. Upon en banc review, the board shall vote
 3 to either grant or deny parole and render a statement of decision.
 4 The en banc review shall be conducted pursuant to subdivision
 5 (e). ~~The release date shall be set in a manner that will provide~~
 6 ~~uniform terms for offenses of similar gravity and magnitude with~~
 7 ~~respect to their threat to the public, and that will comply with the~~
 8 ~~sentencing rules that the Judicial Council may issue and any~~
 9 ~~sentencing information relevant to the setting of parole release~~
 10 ~~dates. The board shall establish criteria for the setting of parole~~
 11 ~~release dates and in doing so shall consider the number of victims~~
 12 ~~of the crime for which the inmate was sentenced and other factors~~
 13 ~~in mitigation or aggravation of the crime. At (l).~~

14 (g) At least one commissioner of the panel shall have been
 15 present at the last preceding meeting, unless it is not feasible to
 16 do so or where the last preceding meeting was the initial meeting.
 17 Any person on the hearing panel may request review of any
 18 decision regarding parole for an en banc hearing by the board. In
 19 case of a review, a majority vote in favor of parole by the board
 20 members participating in an en banc review is required to grant
 21 parole to any inmate.

22 (b)

23 (h) The panel or the board, sitting en banc, shall set a release
 24 date unless it determines that the gravity of the current convicted
 25 offense or offenses, or the timing and gravity of current or past
 26 convicted offense or offenses, is such that consideration of the
 27 public safety requires a ~~more lengthy~~ period of incarceration
 28 *beyond the base term* for this individual, *as adjusted*, and that a
 29 parole date, therefore, cannot be fixed at this meeting. ~~After~~

30 (i) ~~After the effective date of this subdivision July 31, 2001,~~ any
 31 decision of the parole panel finding an inmate suitable for parole
 32 shall become final within 120 days of the date of the hearing.
 33 During that period, the board may review the panel's decision.
 34 The panel's decision shall become final pursuant to this subdivision
 35 unless the board finds that the panel made an error of law, or that
 36 the panel's decision was based on an error of fact, or that new
 37 information should be presented to the board, any of which when
 38 corrected or considered by the board has a substantial likelihood
 39 of resulting in a substantially different decision upon a rehearing.
 40 In making this determination, the board shall consult with the

1 commissioners who conducted the parole consideration hearing.
2 ~~No~~ A decision of the parole panel shall *not* be disapproved and
3 referred for rehearing *by the board* except by a majority vote of
4 the ~~board~~ *commissioners*, sitting en banc, following a public
5 meeting.

6 ~~(e)~~

7 (j) For the purpose of reviewing the suitability for parole of
8 those inmates eligible for parole under prior law at a date earlier
9 than that calculated under Section 1170.2, the board shall appoint
10 panels of at least two persons to meet annually with each inmate
11 until the time the person is released pursuant to proceedings or
12 reaches the expiration of his or her term as calculated under Section
13 1170.2.

14 ~~(d)~~

15 (k) It is the intent of the Legislature that, during times when
16 there is no backlog of inmates awaiting parole hearings, life parole
17 consideration hearings, or life rescission hearings, hearings will
18 be conducted by a panel of three or more members, the majority
19 of whom shall be commissioners. The board shall report monthly
20 on the number of cases where an inmate has not received a
21 completed initial or subsequent parole consideration hearing within
22 30 days of the hearing date required by subdivision (a) of Section
23 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless
24 the inmate has waived the right to those timeframes. That report
25 shall be considered the backlog of cases for purposes of this
26 section, and shall include information on the progress toward
27 eliminating the backlog, and on the number of inmates who have
28 waived their right to the above timeframes. The report shall be
29 made public at a regularly scheduled meeting of the board and a
30 written report shall be made available to the public and transmitted
31 to the Legislature quarterly.

32 ~~(e)~~

33 (l) For purposes of this section, an en banc review by the board
34 means a review conducted by a majority of commissioners holding
35 office on the date the matter is heard by the board. An en banc
36 review shall be conducted in compliance with the following:

37 (1) The commissioners conducting the review shall consider
38 the entire record of the hearing that resulted in the tie vote.

39 (2) The review shall be limited to the record of the hearing. The
40 record shall consist of the transcript or audiotape of the hearing,

1 written or electronically recorded statements actually considered
2 by the panel that produced the tie vote, and any other material
3 actually considered by the panel. New evidence or comments shall
4 not be considered in the en banc proceeding.

5 (3) The board shall separately state reasons for its decision to
6 grant or deny parole. *The board's stated reasons shall demonstrate,*
7 *on the record, an individualized consideration of all relevant*
8 *factors. In the case of an inmate who has served beyond his or*
9 *her base term of incarceration, as adjusted, a decision by the board*
10 *to deny parole shall be supported by substantial evidence and with*
11 *respect to the entire record.*

12 (4) A commissioner who was involved in the tie vote shall be
13 recused from consideration of the matter in the en banc review.

14 (m) (1) *The board shall collect and maintain statistics that*
15 *show, annually, the number of inmates in state prison who are*
16 *serving a term in excess of their base term of incarceration, as*
17 *adjusted by applicable enhancements or credits, and the percentage*
18 *of all cases decided each year in which the board, in a final*
19 *decision, by a panel or the board sitting en banc, has declined to*
20 *find an inmate suitable for parole, despite the fact that the inmate*
21 *has served a sentence beyond the base term of incarceration, as*
22 *adjusted by applicable enhancements or credits.*

23 (2) *The board shall submit a report to the Legislature detailing*
24 *the information collected pursuant to paragraph (1) and shall*
25 *submit the report on or before January 1, 2016, and annually*
26 *thereafter, notwithstanding Section 10231.5 of the Government*
27 *Code.*

28 (3) *The report required by this subdivision shall be submitted*
29 *pursuant to Section 9795 of the Government Code.*

30 ~~SECTION 1. It is the intent of the Legislature to enact~~
31 ~~legislation relating to sentencing and parole.~~